IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 318 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE C.K.BUCH

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

RAJU @ SANJAY MUNNA BAHADUR SONI - Appellant(s)
Versus
THE STATE OF GUJARAT & 1 - Opponent(s)

==========

Appearance :
MR PK SHUKLA for Appellant(s) : 1,
MS.PANDIT, ADDL.PUBLIC PROSECUTOR for Opponent(s) : 1,

==========

CORAM : HONOURABLE MR.JUSTICE C.K.BUCH

Date : 05/09/2007

ORAL JUDGMENT

Present appeal is preferred by the appellant, who was husband of the deceased and has been held guilty by the learned Additional Sessions Judge,

Vadodara in Sessions Case No.128 of 2002 on 4th March, 2003. The appellant has been convicted for the offence punishable under Section 498 (A) and 306 of the Indian Penal Code and has been sentenced to undergo three years rigorous imprisonment and to pay fine of Rs.500/-, in default of making payment of fine to undergo three months simple imprisonment for the offence punishable under Section 498 (A) of the Indian Penal Code. Whereas, for the offence punishable under Section 306 of the Indian Penal Code the appellant is sentenced to undergo seven years rigorous imprisonment and to pay a fine of Rs.1000/-, in default of making payment of fine to undergo six months simple imprisonment. The learned trial Judge has ordered that all the sentences should run concurrently and set off the period which the appellant has undergone during the course of trial.

1.1 Of course, the cause-title of the paper-book shows that impugned judgment and order is passed by the learned Additional Sessions Judge, Fast Track Court No. Bharuch, but it appears that said mistake is resulted due to negligence on part of the person who has prepared the cause-title. In-fact the

impugned judgment and order is passed by learned Additional Sessions Judge, Vadodara.

2. Mr.Shukla, learned Counsel has been appointed by the High Court Legal Aid Committee at upon request made by the appellant. The appellant-accused was given assistance at the time of facing trial. Mr.Shukla has submitted that the accused is in prison since last more than five years and in-fact this is a case where the learned trial Judge ought not to have imposed punishment for more than five years even on establishment of guilt and for that Mr.Shukla has pointed out following crucial aspect of the matter.

i) the socio-economic background of the appellant-accused and the deceased.

ii) the deceased had married with the accused on her personal love and affection and she was doubting the character of the appellant by suspecting that appellant had developed some illicit relationship with one girl presiding in the village Paisapur.

iii)As the deceased had married with the appellant-accused against the will and wish of her parents, she was not getting any sympathy or family warmth from her parents and the parents were not keeping relationship with her.

3. According to Mr.Shukla, it is clear that the act of suicide may not be the only result of alleged cruelty and therefore the punishment of seven years ought not to have been imposed. However, after some deliberation, he has fairly submitted that he may not press this appeal as regards the order of conviction is concerned but his submissions should be considered so far as quantum of punishment is concerned. He has submitted that the quantum of punishment should be reduced so far as offence punishable under the provisions of Section 306 of the Indian Penal Code is concerned.

4. In response of the query raised by the Court, Ms.Pandit, learned A.P.P., after taking this

Court through the relevant part of the evidence and the case of prosecution of alleged cruelty, has submitted that the imposition of rigorous imprisonment for five years also would have been adequate punishment. It appears that alleged cruelty may not be the only cause for her commission of suicide because other socioeconomic circumstance were also there. It is not a matter of dispute that she had married with the accused because of her personal love and affection, so also, against the will and wish of her parents. There was no demand of dowry and alleged cruelty was not on account of any demand which only can be met with by providing financial assistance from the deceased parents. In such a situation this Court can pass appropriate order especially when the appellant-accused fairly accepts the order of conviction recorded by the learned trial Judge. However, the dispute is only on the point of quantum of punishment.

5. Having considered the totality and facts and circumstances of the case and the submissions made before the Court and when the appellant has not

challenged the order of conviction, the Court is of the view that present appeal requires to be partly allowed by reducing the period of substantive sentence imposed for the offence punishable under Section 306 of the Indian Penal Code.

6. In the result, present Criminal Appeal is partly allowed. The judgment and order of conviction and sentence of fine passed by the learned Additional Sessions Judge, Vadodara in Sessions Case No.128 of 2002 on 4th March, 2003 for the offence punishable under Section 498 (A) and 306 of the Indian Penal Code is hereby confirmed. The sentence imposed for non-payment of amount of fine for both the offences is also confirmed.

6.1 So far as judgment and order of sentence for the offence punishable under Section 498 (A) is hereby confirmed. Whereas, the judgment and order of sentence for the offence punishable under Section 306 is hereby altered and reduced to the five years instead of seven years.

6.2 As the appellant-accused has already

undergone the period of sentence for more than five years, the appellant obviously shall have to be set at liberty forthwith, if not required for any other purpose or in any other case. Order and Direction accordingly.

6.3 The Registry is directed to send the writ of this Farad, forthwith, to the Jail Authorities where the appellant is at present serving the sentence.

(C.K.BUCH, J.)

sompura